

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 7, Group 2, Article 7, Section 3314
of the General Industry Safety Orders

SUMMARY

This rulemaking action is the result of an Occupational Safety and Health Appeals Board (OSHAB) Decision (Docket No. 99-R4D5-2285, Helical Products Co, Inc., dated June 8, 2000) and a Request For Change in an Existing Regulation (Form 9) received from the Division of Occupational Safety and Health (Division) on August 21, 2000.

The OSHAB Decision was based on difficulties in applying GISO Section 3314(a) and (b) due to arguable distinctions between adjusting and setting-up operations of prime movers, machinery, and equipment. GISO Section 3314(a) is intended to apply to the control of hazardous energy during cleaning, servicing and adjusting operations. GISO Section 3314(b) is intended to apply to the control of hazardous energy during repair work and setting-up operations. The terms "cleaning, servicing, adjusting, repairing and setting-up" are not defined in the regulations, and the distinction between the two subsections and their application to the control of hazardous energy, led to an appeal of a citation. Based on testimony received at the hearing, the Administrative Law Judge rendered an opinion that the Division had cited the incorrect subsection and set aside the citation issued to the Appellant.

The Division Form 9 requested the Board to update terminology used in the title and body of Section 3314 for consistency with Federal OSHA and with common usage in the workplace. The Division also requested the Board to require specific procedures and instructions to be developed for specific machines or pieces of equipment, to ensure that employers and employees would not depend on "boilerplate" language commonly seen in written hazardous energy control procedures. Furthermore, the Division requested the Board to add a vertical training requirement for equivalence with the Federal OSHA standard.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This proposed rulemaking action contains numerous nonsubstantive, editorial, reformatting of subsections, and grammatical revisions. These nonsubstantive revisions are not all discussed in this

Initial Statement of Reasons. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

Section 3314. Cleaning, Repairing, Servicing and Adjusting Prime Movers, Machinery and Equipment.

This proposal would amend the title of this Section to read (*new language underscored*), “The Control of Hazardous Energy for the Cleaning, Repairing, Servicing, Setting-Up, and Adjusting Operations of Prime Movers, Machinery and Equipment, Including Lockout/Tagout.” The term “Lockout/Tagout” has been added to the title in order to assist members of the regulated public who are familiar with the corresponding federal requirement and terminology in locating California’s requirements. The proposed amendment is necessary to clarify what the requirements of Section 3314 pertain to and aid the regulated public in locating these requirements.

Subsection (a)

Existing subsection (a) requires that machinery or equipment capable of movement be stopped and the power source de-energized or disengaged; and if necessary, the moveable parts shall be mechanically blocked or locked out to prevent inadvertent movement during cleaning, servicing or adjusting operations unless the machinery or equipment must be capable of movement during this period in order to perform a specific task. If so, the employer shall minimize the hazard by providing and requiring the use of extension tools or other methods or means to protect employees from injury due to such movement. The section also requires that employees be made familiar with the safe use and maintenance of such tools by thorough training. Finally, existing subsection (a) states that, “for the purpose of Section 3314, cleaning, repairing, servicing and adjusting activities shall include unjamming prime movers, machinery and equipment.”

This proposal would revise and relocate the bulk of subsection (a) to subsection (c), in order to accommodate two new subsections, the first of which is new subsection (a) entitled “Application”. It is proposed to further subdivide new subsection (a) into two subsections and add an informative “Note” as follows:

Proposed subsection (1) reads, “This Section applies to the cleaning, repairing, servicing, setting-up and adjusting of machines and equipment in which the unexpected energization or start up of the machines or equipment, or release of stored energy could cause injury to employees.” This subsection is substantially based on 29 Code of Federal Regulation (CFR), Part 1910.147(a)(1)(i) and will clarify the scope and application of Section 3314. Subsection (2), taken from the last sentence of existing subsection (a) and kept for clarity purposes, reads, “For the purposes of this Section, cleaning, repairing, servicing and adjusting activities shall include unjamming prime movers, machinery and equipment.” An informative “Note” is proposed which states that requirements for working on energized electrical systems are prescribed in the Electrical Safety Orders, Sections 2320.1 through 2320.9 or 2940 through 2945. This note is added to clarify that requirements for working on energized electrical systems are prescribed in the Electrical Safety Orders. The proposed changes are necessary

to clarify the application and scope of Section 3314, including directing the regulated public to the Electrical Safety Orders for applications involving work on energized electrical systems.

Subsection (b)

Existing subsection (b) requires that prime movers, equipment, or power-driven machines equipped with lockable controls or readily adaptable to lockable controls shall be locked out or positively sealed in the “off” position during repair work and setting-up operations. It also states that machines, equipment, or prime movers not equipped with lockable controls or readily adaptable to lockable controls shall be considered in compliance with Section 3314 when positive means are taken, such as de-energizing or disconnecting the equipment from its source of power, or other action which will prevent the equipment, prime mover or machine from inadvertent movement. Finally, the existing subsection requires that, in all cases, accident prevention signs or tags shall be placed on the controls of the equipment, machines and prime movers during repair work. An “exception” following existing subsection (b) states that minor tool changes and adjustments, and other minor servicing activities, which take place during normal production operations are not covered by the requirements of Section 3314 if they are routine, repetitive, and integral to the use of the equipment or machinery for production, provided that the work is performed using alternative measures which provide effective protection.

Due to the addition of proposed new subsections (a) and (b), this proposal would revise and reletter existing subsection (b) as subsection (d). A new “Definitions” subsection (b) is proposed which will define lockout/tagout terms: “Locked-out,” “Normal Production Operations,” and “Prime Mover.” An ad hoc advisory committee convened to review proposed amendments to Section 3314 was in consensus that these terms should be defined in order to add clarity to the regulations. The definition for “Locked-out” is based in large part on an existing clarifying note under existing subsection (b). The definition for “Normal Production Operations” is taken from 29 CFR 1910.147(b), while the definition for “Prime Mover” is based on a definition in GISO Section 3281. “Setting-up” and “Adjusting” are not defined, as many committee members felt these are common terms that are not possible to define where they cover all industries and processes that could be affected by the regulations. Also, attempts to define them could result in loss of flexibility in applying them to unique needs in particular industries. The proposed changes are necessary to clarify essential terms as they are used in the proposed modifications to GISO Section 3314.

Subsection (c)

Existing subsection (c) requires the employer to provide a sufficient number of accident prevention signs, tags, padlocks, seals or other similarly effective means which may be required by any reasonably foreseeable repair emergency. It also requires means by which signs, tags, padlocks and seals can be readily secured to the controls and specifies attachment means for tagout devices.

This proposal would revise and reletter existing subsection (c) as subsection (e) and entitle it “Materials and Hardware.” Existing subsection (a) is proposed to be relocated to subsection (c) and entitled: “Cleaning, Servicing and Adjusting Operations.” Clarifications to existing, relettered subsection (a) are

proposed which add “release of stored energy” to the hazards to be prevented and clarify that accident prevention signs or tags are to be placed on the controls of the power source during this period. This proposal would further subdivide those provisions of existing subsection (a) pertaining to work that is necessary while the machinery or equipment is capable of movement into new subsection (c)(1), and to clarify that interlocks are included among the permissible methods or means of minimizing hazards during this time. The proposed amendments are necessary to assist the public in locating regulations pertaining to cleaning, servicing and adjusting operations, and to clarify these requirements.

Subsection (d)

Existing subsection (d) requires that during repair, prime movers, machines or equipment shall be effectively blocked or otherwise secured to prevent inadvertent movement if such movement can cause injury to employees.

This proposal would delete existing subsection (d) as it overlaps proposed new subsection (d). Existing subsection (b) is proposed to be relettered as subsection (d) entitled “Repair Work and Setting-Up Operations,” and revised by adding “release of stored energy” to the hazards included and adding that setting-up operations also require accident prevention signs, tags or both. The exception relettered from existing subsection (b) is proposed to be clarified as being applicable to the proposed new subsections (c) and (d). A new second exception to (c) and (d) is proposed for work on cord and plug-connected electric equipment for which exposure to the hazards of unexpected energization or start up of the equipment is controlled by the unplugging of the equipment from the energy source and by the plug being under the exclusive control of the employee performing the work. It was the advisory committee consensus to add the second exception, taken essentially verbatim from 29 CFR 1910.147(a)(iii)(A), so as not to require lockout procedures for cord-and-plug connected equipment that is under the exclusive control of the employee performing the work. The proposed amendments are necessary to clarify regulations pertaining to repair work and setting-up operations, to clarify applicability of the exceptions, and to assist the public in locating these regulations.

Subsection (e)

Existing subsection (e) contains provisions for repair, adjustment testing, or setting up operations on repetitive process machines, such as numerical control machines, which require power or current continuance to maintain indexing and where such operations cannot be accomplished with the prime mover or energy source disconnected.

This proposal would revise and reletter existing subsection (e) as (f), and entitle it “Repetitive Process Machines.” Existing subsection (c) is proposed to be revised and relettered as subsection (e). The phrases “sufficient number,” and “reasonably foreseeable” are proposed to be deleted from the first sentence of the relettered subsection, as they are vague and unenforceable. This proposal would delete “emergency” from the same sentence, as signs, tags, padlocks, seals, or other similarly effective means are required for all repairs where there is an exposure and not just for emergency repairs. The proposed amendments are necessary to align requirements for the provision of accident prevention

signs, tags, padlocks, or other similar means with federal counterpart regulations and use terminology consistent with usage common in the industry and federal counterpart regulations.

Subsections (f) and (g)

Existing subsection (f) contains requirements for an energy control procedure to be developed and utilized by the employer when employees are engaged in the cleaning, repairing, servicing or adjusting prime movers, machinery and equipment. The existing subsection also prescribes the content of the procedure. Existing subsection (g) requires the hazardous energy control procedures to be documented in writing.

This proposal would combine existing subsections (f) and (g) into a single subsection relettered as (g) and entitled “Hazardous Energy Control Procedures.” The term “hazardous” is added to describe the type of energy to be controlled, and “setting-up” is added for consistency with other parts of the regulation. The proposed amendments are necessary to assist the regulated public in understanding requirements for hazardous energy control procedures by consolidating the requirements for procedures and documentation into one subsection.

This proposal would further subdivide new subsection (g) into two parts: (g)(1) incorporates the contents of existing subsection (f), which outlines the requirements of hazardous energy control procedures; and (g)(2), which is existing subsection (g) requires the employer’s hazardous energy control procedures to be documented in writing. An exception to the requirement for documentation of hazardous energy control procedures is proposed, whereby a particular machine or equipment must satisfy an eight-part test based on the federal exception to 29 CFR 1910.147(c)(4). The proposed exception is necessary to reduce the paperwork load on employers without jeopardizing employee safety. The documentation exception only applies to single-energy source equipment where control of the energy source is under the exclusive control of the employee performing the cleaning, repairing, servicing, setting-up and adjusting operations and where the machine or equipment has no potential for stored or residual energy or reaccumulation of stored energy after shut-down.

Proposed new subsection (g)(2) is further subdivided into two parts: (A) specifies that the employer’s hazardous energy control procedure shall include separate instructions for the safe lockout/tagout of each machine or piece of equipment affected by the hazardous energy control procedure; and (B) requires that these machine/equipment-specific lockout/tagout instructions are to be readily available and understandable to all affected employees. In addition to the eight-part exception to (g)(2), an exception to subsection (g)(2)(A) is proposed which will permit hazardous energy control procedures to be written for a group or type of machinery/equipment where certain elements exist such that the procedures for each machine or equipment are essentially similar. The proposed subsection is necessary to clarify hazardous energy control procedure documentation, availability, and conditions where a single procedure for a group or type of machinery or equipment may be permissible.

Subsection (h)

Existing subsection (h) requires that hazardous energy control procedures shall be inspected at least annually to ensure that the procedures and requirements of this section are being followed. The subsection also prescribes the manner in which the inspections shall be conducted and certified.

This proposal would add the title “Periodic Inspection” to existing subsection (h) and revise the subsection to replace the term “authorized employee” with “qualified person” in subsection (h)(1). Additionally, the term “hazardous energy” is proposed to be used consistently throughout. The proposed amendments are necessary to clarify requirements by providing consistent terminology throughout the subsection. Furthermore, the change from “authorized employee” to “qualified person” in subsection (h)(1) is based on committee consensus that the inspection/audit should be performed by an individual with qualifications as defined in GISO Section 3207.

Proposed new subsection (j)

A new subsection (j) is proposed, entitled “Training”, which specifies that: (1) affected employees are to be trained on the hazardous energy control procedures and on the hazards related to performing any activity required for cleaning, repairing, servicing, setting-up, and adjusting and prime movers, machinery and equipment; and (2) such training shall be documented and kept in the employee’s training records as required by Section 3203. The proposed new subsection is necessary to ensure that affected employees are properly trained regarding hazardous energy control procedures and the overall hazards associated with cleaning, repairing, servicing, setting-up, and adjusting prime movers, machinery and equipment. The proposed new subsection is also necessary to provide employers with more specific guidance on training in hazardous energy control as a supplement to training documentation and retention requirements contained in the Title 8, Injury and Illness Prevention Program of GISO Section 3203.

DOCUMENTS RELIED UPON

1. Occupational Safety and Health Appeals Board Decision, Docket No. 99-R4D5-2285, Helical Products Co., Inc., dated June 8, 2000, regarding appeal of citation of GISO Section 3314(a).
2. Division of Occupational Safety and Health, Request For Change in an Existing Regulation (Form 9) received from the Division of Occupational Safety and Health on August 21, 2000, requesting the Board to update terminology, to require specific procedures and instructions to be developed for specific machines or pieces of equipment, and to develop a vertical training standard for lockout/tagout.
3. 29 Code of Federal Regulation (CFR) 1910.147, The control of hazardous energy (lockout/tagout).

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, because the proposed modifications are clarifying changes to existing regulations necessary for equivalency with federal lockout/tagout standards.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because these regulations do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulations do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.